

CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

AGENDA DATE: May 24, 2022

PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Elizabeth Triggs, 915-212-0094

DISTRICT(S) AFFECTED: District 8

STRATEGIC GOAL: Goal 1: Create an Environment Conducive to Strong Sustainable Economic Development

SUBGOAL: Goal 1.1 Stabilize and Expand El Paso's Tax Base

SUBJECT:

Discussion and action on a resolution that the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement ("Agreement") by and between the **CITY OF ELPASO, TEXAS** and **1 TEXAS TOWER, LLC** and **HOTEL DULCINEA, LLC** to support and facilitate the development of a hotel, which includes the redevelopment, rehabilitation and improvement of the downtown building commonly known as the Texas Tower, located at **109 North Oregon Street, El Paso, Texas 79901**. The Agreement requires the Applicant to make a minimum investment of \$18 million. Over the term of the Agreement, the City will provide local performance-based economic incentives not to exceed \$2,186,000; additionally, the City will apply to participate in the State Convention Center Hotel Program established by Chapter 351 of the Texas Tax Code.

BACKGROUND / DISCUSSION:

This Chapter 380 Agreement facilitates the redevelopment, rehabilitation and improvement of the downtown building commonly known as the Texas Tower, located at 109 North Oregon Street, El Paso, Texas 79901. Through the Agreement, the building will be rehabilitated to accommodate at least a 3-star Hampton Inn & Suites, 120-room hotel, adding to the City's inventory of downtown hotel rooms and increasing the City's ability to attract conventions to its nearby Convention Center. Attracting conventions is an economic development strategy that increases visitor spending within our region.

Texas Tower is a 15-story, historic building listed on the National Register of Historic Places. Redevelopment of the property will be accomplished in a manner that preserves the façade of the building. Historic preservation and rehabilitation are central to our Downtown revitalization strategy. This is the seventh historic renovation project located in Downtown El Paso and incentivized by City Council over the last ten years. Together, these historic renovations represent a nearly \$225 million investment in the urban core of our City; and the addition of 720 guest rooms.

Through this Agreement, the Applicant will invest a minimum of \$18 million into the project. Upon project completion and Agreement metrics being met, the City will provide local performance based incentives not to exceed \$2,186,000 in the form of: (1) a 13-year, 100 percent property tax rebate on the City's portion of incremental revenue generated by the project; (2) a 10-year, 20 percent Hotel Occupancy Tax rebate on the City's portion of the tax; (3) a 10-year, 100 percent rebate on the City's portion (1%) of the Sales and Use Tax for sales generated at the hotel; and (4) a one-time, 100 percent rebate on the City's portion (1%) of the Sales and Use Tax generated on construction materials used in the redevelopment of the property.

In addition, the City will apply for participation in the State Convention Center Hotel Program established by Chapter 351 of the Texas Tax Code. If accepted into the program, the City will rebate to the Applicant 100 percent of the State's portion of Hotel Occupancy Tax and Sales and Use Tax revenue generated by the Hotel; estimated to be \$3,209,000 over the 10-year period. This is the fourth downtown hotel project where the City is leveraging local dollars with State dollars to increase local guest room inventory.

PRIOR COUNCIL ACTION:

N/A

Revised 04/09/2021

AMOUNT AND SOURCE OF FUNDING:

Performance-based incentive built on new revenue generated by the Project

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

PRIMARY DEPARTMENT: Economic and International Development

SECONDARY DEPARTMENT: N/A

*******REQUIRED AUTHORIZATION*******

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement (“Agreement”) by and between the **CITY OF EL PASO, TEXAS** and **1 TEXAS TOWER, LLC** and **HOTEL DULCINEA, LLC** to support and facilitate the development of a hotel, which includes the redevelopment, rehabilitation and improvement of the downtown building commonly known as the Texas Tower, located at **109 North Oregon Street, El Paso, Texas 79901**. The Agreement requires the Applicant to make a minimum investment of \$18 million. Over the term of the Agreement, the City will provide local performance-based economic incentives not to exceed \$2,186,000; additionally, the City will apply to participate in the State Convention Center Hotel Program established by Chapter 351 of the Texas Tax Code.

APPROVED this ____ day of _____, 2022.

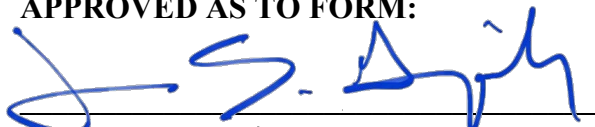
CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT



Elizabeth K. Triggs, Director
Economic & International Development

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** (“Agreement”) is entered into by and between the **CITY OF EL PASO, TEXAS** (“City”), a Texas home rule municipal corporation, and **1 TEXAS TOWER, LLC** (“Texas Tower”) and **HOTEL DULCINEA, LLC** (“Hotel Dulcinea”), collectively “Applicants” and each individually an “Applicant”, both Texas limited liability companies, for the purposes and considerations below:

WHEREAS, the Applicants desire to enter into this Agreement pursuant to Chapter 380 and the Texas Constitution Article VIII, Section 52-a; and

WHEREAS, the City desires to provide, pursuant to Chapter 380, incentives to Applicants to develop the Hotel as defined below; and

WHEREAS, the City has the authority under Chapter 380 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

WHEREAS, the City determines that a grant of funds to Applicant will serve the public purpose of enhancing the value of the local tax base and foster and support economic growth and opportunity and to ensure new investments will market the area as a thriving place to work, live and visit, within the City’s downtown core; and

WHEREAS, the City recognizes that tourism, both for business and for pleasure, is a significant component of the City’s economy and cites the importance of the Convention Center and surrounding hotels as critical elements in the City’s efforts to promote tourism in the City; and

WHEREAS, the City and Applicants desire development of the Hotel, which includes the redevelopment, rehabilitation and improvement the downtown building commonly known as the Texas Tower, located at **109 North Oregon Street, El Paso, Texas 79901**, such Development being more specifically described on **Exhibit A** attached hereto; and

WHEREAS, the development of the Hotel will encourage increased economic development in the City, provide significant increases in the City’s sales tax revenues, and improve the City’s ability to provide for the health, safety and welfare of the citizens of El Paso; and

WHEREAS, Applicants are willing to construct a Hotel on Real Property owned by the City and in accordance with the terms and conditions of this Agreement, such Real Property being more specifically described on **Exhibit B** attached hereto; and

WHEREAS, to facilitate development of the Hotel, Hotel Dulcinea will lease floors 2 through 14 of the building from Texas Tower and thereafter Texas Tower shall convey the Real Property (subject to

the lease and any other existing leases), as more particularly described in the legal description contained in **Exhibit B** to the City, and Texas Tower shall retain ownership of the existing and future improvements/structures and all personal property located on the Real Property.

WHREEAS, this property is located within the Tax Increment Reinvestment Zone Number Five (“TIRZ5”), City of El Paso, and is subject to development under the TIRZ5 Amended Final Project Plan and Final Reinvestment Zone Financing Plan, as defined by Section 311.011 of the Texas Tax Code, which has been approved by the City Council; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of El Paso through its support of the Convention Center business, its ability to bolster the tourism industry, providing additional employment opportunities to the citizens of the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the City and Applicants;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement:

- A. **Agreement** means this Chapter 380 Economic Development Program Agreement, together with all attached exhibits.
- B. **Applicant** means 1 Texas Tower, LLC and Hotel Dulcinea, LLC both Texas limited liability companies, located at 109 N. Oregon Suite 1300, El Paso, Texas, 79901.
- C. **Base Year Value** means **\$545,510.00**, being the value of the Real Property, including improvements on the Real Property, as determined by the El Paso Central Appraisal District as of January 1, 2022. However, under no circumstances shall the Base Year Value be interpreted to be equivalent or determinative for appraisal purposes or to be used in any way to determine market value.
- D. **Building and Planning Fee Waiver** means a 100 percent waiver of certain development and building permit and inspections fees specified in Title 18, Title 19 and Title 20 of the El Paso City Code; however, under no circumstances shall the City waive penalty fees associated with development building permitting and inspections.
- E. **City** means the City of El Paso, Texas.
- F. **City Grant Submittal Package** has the meaning assigned to it in Section 3(E) of this Agreement.
- G. **Comprehensive Plan** means the City of El Paso’s Comprehensive Plan entitled “Plan El Paso” adopted by the El Paso City Council on March 6, 2012.

- H. **Construction Materials Sales Tax Rebate** means a one-time 100 percent rebate of the City's one percent (1%) Sales and Use Tax Receipts for materials and labor of taxable items used in the construction of the Development, but in no event will the total Construction Materials Sales Tax Rebate amount exceed **\$141,120.00**.
- I. **Convention and Tourist Facilities** means and includes the following: El Paso Convention Center, located at 1 Civic Center Plaza, El Paso, Texas 79901; El Paso Museum of Art, located at 1 Arts Festival Plaza, El Paso, Texas 79901; El Paso Museum of History, located at 12901 Gateway West, El Paso, Texas 79928; Plaza Theatre Performing Arts Center, located at 125 Pioneer Plaza, El Paso, Texas 79901; and the Baseball Stadium, located at 2 Civic Center Plaza, El Paso, Texas 79901.
- J. **Development** means the planned Hotel, which includes Applicants' redevelopment, rehabilitation and improvement to the downtown building commonly known as the Texas Tower, located at **109 North Oregon Street, El Paso, Texas 79901**, as described by **Exhibit A** attached hereto, but shall not include the area used by the Café Central Restaurant or floors 1, 15, the roof and basement of the building located on the Real Property.
- K. **Downtown Plan** means the Downtown 2015 Plan adopted by El Paso City Council on October 31, 2007, and incorporated into the Comprehensive Plan pursuant to the provisions of Section 213.002 of the Texas Local Government Code.
- L. **Effective Date** means the date upon which both parties have fully executed this Agreement as set forth on the signature pages hereof.
- M. **Event of Default** has the meaning assigned to it by **Section 5** of this Agreement.
- N. **Grant** means each payment paid by the City to Applicants in accordance with this Agreement and, where applicable, contingent on the City receiving the State Hotel Sales Tax Revenue and the State Hotel Occupancy Tax Revenue by operation of Texas Government Code Section 2303.5055.
- O. **Grant Period** has the meaning assigned to it by **Section 2** of this Agreement.
- P. **Ground Lease** means the certain lease agreement to which the City will lease the Real Property to Applicants upon which the Development will be built.
- Q. **Hotel** means the hotel, as described by **Exhibit A** owned and operated by Hotel Dulcinea and generally located at **109 North Oregon Street, El Paso, Texas 79901**, and excludes the area of the Development currently used by the restaurant Café Central.
- R. **Hotel Dulcinea** means HOTEL DULCINEA, LLC, a Texas limited liability company. For the purposes of this agreement, Hotel Dulcinea's address is 109 N. Oregon Street, El Paso, Texas 79901.
- S. **Hotel Franchise** means a franchise for at least a 3-star Hampton Inn and Suites Hotel.

- T. **Local Hotel Occupancy Tax Rebate** means a 20 percent rebate of the City's portion of the hotel occupancy tax collected in connection with the Hotel for 10 years, up to a maximum amount of **\$664,384.00**, whichever comes first. Receipt of the rebate on the City's portion of the hotel occupancy tax by Applicants is not contingent on the Development's participation in the State Convention Center Hotel Program
- U. **Minimum Appraisal Value** means upon the issuance of the certificate of occupancy (temporary or permanent) for the Hotel, or December 31, 2025, whichever occurs first, the value of the real and personal property and improvements of the Development after the construction of the Development below which the Applicant cannot protest nor contest the appraised value of the Development with the El Paso Central Appraisal District during the Term of this Agreement. Under no circumstances shall the Minimum Appraisal Value be interpreted to be equivalent or determinative for appraisal purposes or be used in any way to determine market value. For the purposes of this Agreement, the Minimum Appraisal Value shall be **\$5,455,100.00**.
- V. **Minimum Investment** means all Qualified Expenditures, including, without limitation, those costs incurred, self-performed or contracted to third parties by the Applicant over the course of the redevelopment, rehabilitation, and improvement of the Development. For the purposes of this Agreement, the Minimum Investment amount shall be **\$18,000,000.00**.
- W. **Property Tax Rebate** means a 100 percent rebate of the City's portion of the combined incremental ad valorem real and personal property tax revenue generated by or for the Real Property above the Base Year Value for the Development. This rebate shall be limited to a 13-year period within the Grant Period, or up to the maximum amount of **\$1,335,292.00**, whichever occurs first. Receipt of the Property Tax Rebate is not contingent on the Development's participation in the State Convention Center Hotel Program.
- X. **Qualified Expenditures** means those direct costs incurred by Applicants after the Effective Date for material used and labor required in the design, demolition of interior portions of the building including the exterior windows and glass of the building, development, construction, renovation, or rehabilitation of the Development, including furniture, fixtures and equipment costs, environmental issues and studies (if any), Hotel costs and professional fees. The foregoing shall include, without limitation, all costs self-performed or contracted to third parties by the Applicants over the course of the design, demolition of interior portions of the building including the exterior windows and glass of the building, development, construction, renovation, or rehabilitation of improvements on the Real Property including furniture, fixtures and equipment costs, environmental issues and studies (if any), Hotel costs and professional fees.
- Y. **Real Property** means approximately 0.15 acres of land located at 109 North Oregon Street, El Paso, Texas 79901, owned by the City to be leased to Applicants as more specifically described in **Exhibit B** of this Agreement.
- Z. **Retail Sales and Use Tax Rebate** means a rebate of 100 percent of the City's one percent Sales Tax Receipts generated by and attributable solely to the Applicants and the Applicant's Retailers, tenant's

and/or occupants' sales of Taxable Items consummated at the Hotel in the immediately prior calendar year and remitted from the State Comptroller to the City. For purposes of this Agreement, sales and use tax revenue generated in areas of the building not included in the Development as defined in Section 1(J) of this Agreement shall not be eligible for Retail Sales and Use Tax Rebate under the terms of this Agreement. This rebate shall be limited to a 10-year period within the Grant Period, or up to a maximum amount of **\$45,000.00**, whichever comes first. Receipt of the Retail Sales and Use Tax Rebate is not contingent on the Development's participation in the State Convention Center Hotel Program. To receive the Sales and Use Tax Rebate, the Applicant must complete and submit **Exhibit D** and provide as an annual attachment to the Grant Submittal Package.

- AA. **Retailer(s)** means tenants and lessees of the Applicant required by the State Comptroller to collect Retail Sales and Use Tax or Mixed Beverage Tax on taxable sales consummated in the City at the Hotel covered by Chapter 151 and Chapter 183 of the Texas Tax Code.
- BB. **Sales Tax Receipts** means receipts of retail sales and use tax revenue remitted from the State Comptroller based upon the Applicants and Applicant's Retailers, tenant's and/or occupants' collection of Sales and Use Tax during the Term of this Agreement, that are generated by and solely attributable to the Applicants and Applicant's Retailers, tenant's and/or occupants' sale of Taxable Items consummated at the Hotel.
- CC. **State Comptroller** means the Office of the Texas Comptroller of Public Accounts, or any successor agency.
- DD. **State Convention Center Hotel Program** means the program established by Chapter 351 of the Texas Tax Code.
- EE. **State Grant Submittal Package** has the meaning assigned to it in Section 3(D) of this Agreement.
- FF. **State Hotel Occupancy Tax Revenue** means the amount of revenue from the hotel occupancy tax assessed and collected by the State of Texas pursuant to Chapter 156 of the Texas Tax Code and refunded to the City by operation of Section 351.101 of the Texas Tax Code, and that is derived from or attributable to the Hotel.
- GG. **State Hotel Occupancy Tax Rebate** means a 100 percent rebate of the State Hotel Sales Tax Revenue generated by or for the Hotel. This rebate is statutorily limited to a 10-year period within the Grant Period. Receipt of the State Hotel Occupancy Tax Rebate is contingent on the Development's participation in the State Convention Center Hotel Program.
- HH. **State Hotel Sales Tax Revenue** means the amount of revenue from a sales tax lawfully assessed and collected by the State of Texas pursuant to Texas Tax Code Section 151 that is derived from or attributable to sales transacted in the Hotel, whether by Hotel Dulcinea or another person or entity, for merchandise or sales physically located in the Hotel, and refunded to the City by operation of Sections 351.102 and 151.429, as applicable of the Texas Tax Code.

- II. **State Hotel Sales Tax Rebate** means a 100 percent rebate of the State Hotel Sales Tax Revenue generated by or for the Hotel. This rebate shall be limited to a 10-year period within the Grant Period. Receipt of the State Hotel Occupancy Tax Rebate is contingent on the Development's participation in the State Convention Center Hotel Program.
- JJ. **Taxable Items** has the same meaning assigned in Chapter 151, Texas Tax Code.
- KK. **Term** has the meaning assigned to it by **Section 2** of this Agreement.
- LL. **Texas Tower** means 1 TEXAS TOWER, LLC, a Texas limited liability company. For the purposes of this Agreement, Texas Tower's address is 109 N. Oregon Street Suite 1300, El Paso, Texas, 79901.

SECTION 2. TERM AND GRANT PERIOD.

- A. **Term and Effective Date.** The Term of this Agreement shall commence on the Effective Date and shall terminate on the first to occur: (i) the date when the Grant is fully paid; (ii) 18 years from the Effective Date; (iii) the proper termination of this Agreement in accordance with applicable provisions contained herein; or (iv) termination by mutual consent of the parties in writing; provided, however, that failure of Applicant to receive its certificate(s) of occupancy (either temporary or permanent) no later than **December 31, 2025**, shall result in the immediate termination of this Agreement. For the purposes of this Agreement, "certificate(s) of occupancy" does not include temporary certificate(s) of occupancy.
- B. **Grant Period and Grant Payment Eligibility.** The Grant Period shall begin when the Applicant submits to the City the initial State and City Grant Submittal Packages to be no later than January 1, 2027, with early submission being acceptable. Subsequent submittals will be due by April 1 for the previous calendar year. Applicant's eligibility for Grant payments shall be limited to 13 consecutive years for the Property Tax Rebate; and 10 consecutive years for the Local Hotel Occupancy Tax Rebate, Retail Sales and Use Tax Rebate, State Hotel Occupancy Tax Rebate, and State Hotel Sales Tax Rebate, within the Term of this Agreement and subject to the provisions and tenets contained in this Agreement. The City shall annually review the Applicant's eligibility for Grant payments in accordance with **Exhibits C-1, C-2, and D** during the Grant Period.
- C. Notwithstanding any provision as contained in this Agreement to the contrary, four (4) years from the Effective Date of this Agreement, such applicable Applicant must obtain certificate(s) of occupancy for the Development.

SECTION 3. OBLIGATIONS OF THE APPLICANT.

During the Term of this Agreement, Applicant shall comply with the following:

- A. **Development.** Applicant agrees to develop and construct, at its sole cost, the Development; and further agrees:

- 1) That it shall make or cause to be made the Minimum Investment in the development and construction of the Development;
- 2) That the Development shall preserve the exterior façade of the building in a manner consistent with the renderings attached hereto in **Exhibit A**;
- 3) That the Development shall be completed in accordance with the requirements and review provisions of Chapter 20.20 of the City municipal code, where applicable;
- 4) That it shall diligently and faithfully in a good and workmanlike manner pursue the completion of the Development and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations; and moreover, shall give preference and priority to local manufacturers, suppliers, contractors and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency.
- 5) That it shall develop and construct, at its sole cost an approximately 120 room at least 3-star Hampton Inn and Suites Hotel, as further conceptually shown on **Exhibit A**, attached hereto;
- 6) That it shall make a Minimum Investment in an amount of **\$18,000,000.00** towards the Development, no later than **December 31, 2025**;
- 7) That it shall obtain a certificate of occupancy for the Development no later than four (4) years from the Effective Date of this Agreement.; and
- 8) That the Development shall be limited in its use to uses consistent with the development and operation of the Hotel and consistent with the City's development goals, which is the encouraging of development and redevelopment of Downtown El Paso.

B. **Ground Lease.** The City and Texas Tower shall execute the Ground Lease simultaneously upon execution of this Agreement. As permitted in Section 272.001(b)(6) of the Texas Local Government Code, the Ground Lease shall grant Texas Tower an option to purchase the Real Property from the City, and shall grant the City the right to put the Real Property to Texas Tower. The Ground Lease shall allow Texas Tower to sublease the Real Property to Hotel Dulcinea and other third parties to effectuate the Development contemplated and described in this Agreement. Applicants shall provide City with a list of the subtenants as part of Applicant's annual City Grant Submittal Package.

C. **Inspection of Records.** Applicants, during normal business hours, at its principal place of business in El Paso, and with two weeks prior written notice, shall allow the City or its agents reasonable access to Applicant's records and books, and other records that are related to the economic development considerations and incentives described herein, to verify records related to the City's economic development considerations and incentives provided herein. The City shall maintain the confidentiality of such records in accordance with and subject to commercially reasonable practices and all applicable laws to the extent allowed by the Texas Open Records Act.

- D. **State Grant Submittal Package.** On or before January 1, 2027 and continuing on a quarterly basis of each year thereafter, but not to exceed 10 consecutive years, Applicants will provide to the City, and maintain during the Term of this Agreement, a list of each Retailer that occupies or occupied the Development during the Grant Period, including the taxpayer identification number, taxpayer outlet number (as shown on the Texas sales tax permit), taxpayer name and taxpayer location as reported to the State Comptroller, and any other information required by the State Comptroller to generate and provide the City with the State Comptroller's sales tax report for the Grant Period, provided however, Applicants shall not be required to provide any such information or reporting to the City or any other party for any occupants at the Development that are not part of any incentives (for example the restaurant used by Café Central). The State Grant Submittal Package shall be in the form provided in **Exhibit C-1**, and will be due within 90 days of the date any sales and hotel occupancy taxes are due paid by Applicants and Applicant's Retailers, tenant's and/or occupants to the State. Any submission after this 90-day window will be considered late and untimely.
- E. **City Grant Submittal Package.** Unless otherwise agreed by the City and Applicant in writing, Applicant shall annually submit one City Grant Submittal Package in the form provided in **Exhibit C-2**, together with the requisite documentation.
1. On or before January 1, 2027 and continuing on or before April 1st of each year thereafter, but not to exceed the time period described in **Section 2** of this Agreement; early submission is acceptable. A failure by the Applicant to timely submit a Grant Submittal Package in accordance with this paragraph shall not be a waiver by the Applicant to receive a Grant Payment for that or any such Grant year, but may result in a delay of payment until the following City fiscal year.
 2. Concurrent with the submittal of the initial City Grant Submittal Package, Applicant will submit to the City documentation as may be reasonably necessary to verify: (i) the expenditure of the Minimum Investment; (ii) receipt of a final certificate(s) of occupancy for the Development that allows the Applicant to fully occupy and the public to fully access the Development, receipt of which shall have been received no later than **December 31, 2025**; (iii) reasonable documentation confirming the rebate amount due to the Applicant for the Construction Materials Sales Tax Rebate; and (iv) reasonable documentation confirming the rebate amount due to the Applicant for the Local Hotel Occupancy Tax Rebate, Property Tax Rebate, Sales and Use Tax Rebate. Any subsequent City Grant Submittal Packages shall require that the Applicant submit City documentation as may be reasonably necessary to verify the rebate amount due to the Applicant for the: (i) Local Hotel Occupancy Tax Rebate (if applicable); Property Tax Rebate; and Sales and Use Tax Rebate (if any), provided however, the City shall be required to request in writing any such documentation reasonably necessary to verify the rebate amount due to the Applicant from Applicant within 90 days after Applicant has submitted the City Grant Submittal Package or no additional documentation shall be required to be submitted by Applicant, and shall be deemed acceptable.
 3. If Applicant fails to timely submit a Grant Submittal Package for a particular year, then the City may give Applicant written notice of its failure to timely submit such Grant Submittal Package, and Applicant shall have 90 calendar days from the date on which such written notice is given in

which to submit such Grant Submittal Package. Provided the calculation of the Grant payment is correct and has been made in accordance with this Agreement, the City's determination of the amount of the Grant payment due to Applicant is final.

- F. **Form of Submittal Packages.** Unless otherwise agreed by the City and Applicants, each State or City Grant Submittal Package shall be in the form attached hereto as **Exhibit C-1** and **C-2**, respectively. The parties will comply with Texas Government Code Section 2303.5055 which regulates the submission of refund, rebate or payment of tax proceeds to a qualified hotel project and will conform with the parameters stated in **Exhibit C-1**. If Applicant fails to timely submit a Grant Submittal Package for a particular year, then the City may give Applicant written notice of its failure to timely submit such Grant Submittal Package, and Applicant shall have 90 calendar days from the date on which such written notice is given in which to submit such Grant Submittal Package. Provided the calculation of the Grant payment is correct and has been made in accordance with this Agreement the City's determination of the amount of the Grant payment due to Applicant is final.
- G. **Payment of Taxes.** Applicant shall demonstrate before the receipts of any Grant payments, that Applicant has incurred no delinquency taxes by providing certified City tax certificates for the Development. In the event of disputed valuation, Applicant's payment of taxes based upon Applicant's reasonable valuation as allowed by the Texas Tax Code shall satisfy this this requirement, and timely payment of any amount of additional taxes due, if any, after final determination of the value.
- H. **Minimum Appraisal Value.** The parties to this Agreement agree that the taxable value of the Development, after completion of all construction and improvements, will have a Minimum Appraisal Value as defined in **Section 1** of this Agreement and thereafter during the Term of this Agreement. Applicant shall have the right to contest the appraised value of the Development as provided by law, however, during the Term of this Agreement, but after completion of all constructions and improvements, Applicant shall not challenge or permit anyone else to act on its behalf to challenge any assessments by the Central Appraisal District equal to the Minimum Appraisal Value or lower. Any such action will be deemed an Event of Default that will result in the termination of this Agreement. This property value should in no way be interpreted to affect the values set by the Central Appraisal District for tax purposes. Upon the termination of this Agreement, neither this Agreement, nor the values contained within this Agreement, will be used to contest appraisal values or in the determination of the market value of the Development.
- I. **Payment Bond Required.** Applicant will require its prime and/or general contractor to obtain and maintain a payment bond during the development and construction of the Development. Applicant will provide proof of same, once available, to City and will have City added to receive Notice of Default or Termination from the surety issuing said bond. This requirement shall not create any contractual relation between the City, the Contractor, and any subcontractors working on the Project.
- J. **Waivers of Sales Tax Confidentiality.** Applicants shall provide the City, during the Term of this Agreement, a Waiver of Sales Tax Confidentiality as applicable from Applicant, Applicant's Retailers, tenant's and/or occupants of the Hotel, which authorizes the State Comptroller to release

to the City and Applicant Sales and Use Tax information pertaining to the sale of Taxable Items by Applicant at the Hotel during the Term of this Agreement, substantially in the form attached hereto as **Exhibit D**.

1. The Applicants shall be responsible for obtaining the Waivers of Sales Tax Confidentiality as applicable from Applicant, Applicant's Retailers, tenant's and/or occupants of the Hotel and providing the Waivers of Sales Tax Confidentiality to the City. Applicants shall cause Applicant's Retailers, tenant's and/or occupants of the Hotel to maintain an effective Waiver of Sales Tax Information. The City will verify all such information, but the City shall not have an obligation to otherwise collect sales tax information and will have no obligation to make payments under this Agreement without such sales and use tax payment confirmation from the State Comptroller.
2. The confidential Sales and Use Tax information provided or reported by the State Comptroller to the City shall be used to determine the amount of the Grant payment that Applicant is to receive. For any particular Grant Submittal Package and Grant amount determination, the City shall only consider the Sales and Use Tax Receipts that appear on such report by the State Comptroller to the City and that have a valid and effective Waiver of Sales Tax Confidentiality on file with the City.
3. While this Agreement is in effect, Applicant shall, upon request of the City provide such additional documentation as may be reasonably requested by the City to evidence, support and establish the Sales and Use Tax Receipts.

- K. **Use of Meeting Space.** The Applicant agrees to provide to the City, on an annual non-cumulative basis, subject to availability for the dates requested by the City, (i) complimentary use of Hotel ballroom/meeting space at the Hotel or other hotel properties affiliated with Applicant without room rental fees for five (5) event days per year, and (ii) complimentary use of Wi-Fi in meeting space for 10 event days per year, provided that in both instances as provided hereunder, reasonable advance written notice is provided by the City to the Applicant.
- L. **Event Room Block.** Subject to the availability of rooms for the dates requested by the City, the Applicant agrees to provide the City a room block of 50 rooms nights per year, at a discounted rate of 75 percent of the best available rate for visitors of the Convention and Tourist Facilities to include the El Paso Convention Center located at 1 Civic Center Plaza, El Paso, Texas through the Hotel or such other hotels affiliated with the Applicant.
- M. **Government Per Diem Rate.** Subject to the availability of rooms, Applicants agree to provide the City the government per diem rate and direct billing, which the City will timely pay.
- N. **Marketing.** As part of Applicants' "affiliated entities" including other hotels located in the City of El Paso, Applicants agree to participate in sales calls to state and regional markets up to 6 times per year; and participate and state and national industry tradeshow up to 5 times per year.

SECTION 4. OBLIGATIONS OF THE CITY

During the Term of this Agreement and so long as an Event of Default has not occurred and is not continuing as set forth herein, the City shall comply with the following:

- A. **City Grant Payments.** During the Term of this Agreement, and so long as an Event of Default has not occurred, remains uncured or unresolved, and Applicant is in compliance with the terms and provisions of this Agreement, the City shall make annual Grant payments to the Applicant over the Term of the Agreement, and payable as follows:
1. The City agrees to provide a one-time Construction Materials Sales Tax Rebate in an amount up to \$141,120.00 provided Applicants' performance, Applicants' request for payment, and the payment provided by the City are in accordance with the terms and provisions of this Agreement, and due with the initial City Grant Submittal Package;
 2. The City agrees to provide the Local Hotel Occupancy Tax Rebate in a maximum, aggregated amount up to \$664,384.00 provided Applicants' performance, Applicants' request for payment, and the payment provided by the City are in accordance with the terms and provisions of this Agreement;
 3. The City agrees to provide the Property Tax Rebate in a maximum, aggregated amount up to \$1,335,292.00 provided Applicants' performance, Applicants' request for payment, and the payment provided by the City are in accordance with the terms and provisions of this Agreement;
 4. The City agrees to provide the Retail Sales and Use Tax Rebate in a maximum, aggregated amount up to \$45,000.00 provided Applicants' performance, Applicants' request for payment, and the payment provided by the City are in accordance with the terms and provisions of this Agreement; and
 5. Except as expressly provided herein, the City agrees to process and pay to Applicant any eligible Grant payment within 90 days receipt of the Applicant's complete annual City Grant Submittal Package.
- B. **Building and Planning Fee Waiver.** The City agrees to provide the Building and Planning Fee Waiver in accordance with the terms and provisions of this Agreement.
- C. **State Convention Center Hotel Program Grant Payments.** During the Term of this Agreement and so long as an Event of Default has not occurred and Applicant is in compliance with the Agreement, and contingent upon the Applicants' participation in the State Convention Center Hotel Program, the City shall make quarterly Grant payments to the Applicant payable as follows:
1. The City agrees to provide the State Hotel Occupancy Tax Rebate provided Applicants' performance, Applicants' request for payment, and the payment provided by the City are in

accordance with the terms and provisions of this Agreement. Contingent on the City's receipt of the State's portion of the State Hotel Occupancy Tax Rebate collected on the Development, City shall rebate the amount received from the State, within 90 days of receipt from the State

2. The City agrees to provide the State Sales Tax Rebate provided Applicants' performance, Applicants' request for payment, and the payment provided by the City are in accordance with the terms and provisions of this Agreement. Contingent on the City's receipt of the State's portion of the State Sales Tax Rebate collected on the Hotel, City shall rebate the amount received from the State, within 90 days of receipt from the State
3. These Grant payments are and the amount of payments is solely contingent upon the City's receipt of the State Hotel Sales Tax Revenue and State Hotel Occupancy Tax Revenue from the State Comptroller. Accepting the aforementioned, and provided the City has timely and accurately provided all information and submittals required the State Comptroller for the City to receive the State Hotel Sales Tax Revenue and State Hotel Occupancy Tax Revenue from the State Comptroller as provided in this Agreement, Applicants shall have no recourse, should the City not be able to provide to Applicants the Grant payments contemplated in this section.
6. Except as expressly provided herein, the City agrees to process any eligible Grant payment within 90 days receipt of the State Hotel Sales Tax Revenue and State Hotel Occupancy Tax Revenue from the State Comptroller.

D. **Grant Payment Processing.** Except as expressly provided herein, the City will process and pay to Applicant any eligible Grant payment within 90 days after receipt of the Applicant's complete annual Grant Submittal Package. Provided the calculation of the Grant payment is correct and has been made in accordance with this Agreement, the City's determination of the amount of the Grant payment due to the Applicant is final.

E. **General Fund Obligations.** The City agrees to promptly process and remit to Applicants, within the time period as provided in this Agreement, all payments in accordance with terms of this Agreement. It is expressly understood by the parties to this Agreement that, except as otherwise provided herein, the payments contemplated in this Agreement in no way obligate the City's general fund or any monies or credits of the City and creates no debt of, nor any liability to, Applicants or third parties beyond the specific obligations contained herein. All payments made by the City under this Agreement are subject to appropriation of such funds for such payments to be paid in the budget year for which they are made.

SECTION 5. EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default under this Agreement:

- A. **Construction of Development.** Applicant's failure to comply with its construction obligations set forth in this Agreement and failure to proceed to cure same within 90 days after written notice from the City shall be deemed an event of default. If such failure cannot be cured within such 90-day period in the

exercise of all due diligence but Applicant fails or refuses to commence such cure within such 90-day period or fails or refuses to continuously thereafter diligently prosecute such cure, except to the extent such failure is caused by any act or failure to act on the part of the City, such actions or omissions shall be deemed Events of Default.

- B. **Failure to Maintain Hotel.** Failure to operate a Hotel on the Real Property for the term of this Agreement or to operate the Hotel as a limited service Hotel as specified in Section 3 of this Agreement, and if Applicants fail to proceed to cure such failure within 90 days after written notice from the City describing such failure, or if such failure cannot be cured within such 90-day period in the exercise of all due diligence, then if Applicants fail to commence such cure within such 90 day period or fail to continuously thereafter diligently prosecute the cure of such failure, then such actions shall be deemed Events of Default.
- C. **False Statements.** In the event the Applicant provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and Applicant fails to proceed to cure same within 90 days after written notice from the City describing the violation shall be deemed an event of default. If such violation cannot be cured within such 90-day period in the exercise of all due diligence, and Applicant fails to commence such cure within such 90-day period or fails to continuously thereafter diligently prosecute the cure of such violation, such actions or omissions shall also be deemed an event of default. Further, if Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading in a material respect after the time that it was made, and Applicant fails to provide written notice to the City of the false or misleading nature of such warranty, representation or statement within 90 days after Applicant learns of its false or misleading nature, such action or omission shall be deemed an Event of Default.
- D. **Insolvency.** The dissolution or termination of Applicants' existence as a going business or concern, Applicants' insolvency, appointment of receiver for any part of Applicants' portion of the Real Property, any assignment of all or substantially all of the assets of Applicants for the benefit of creditors of Applicants, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicants shall all be deemed Events of Default.
- E. **Property Taxes.** In the event Applicants allow any property taxes owed to the City to become delinquent without being contested in accordance with applicable law and fails to timely and properly follow the law or legal procedures for protest and/or contest of such taxes and to cure such failure, such actions or omissions shall be deemed an Event of Default. Subject to the restrictions noted herein, Applicant shall have the right to contest the appraised value of the Real Property and/or the Development including all improvements located thereon.
- F. **Other Defaults.** Failure of Applicant or City to comply with or to perform any other material term, obligation, covenant or condition contained in this Agreement or in any related documents, and Applicant or City fails to cure such failure within 90 days after written notice from the other party describing such failure shall be deemed an event of default. If such failure cannot be cured within such 90 day period in the exercise of all due diligence, but if Applicant or City also fails or refuses to

commence such cure within such 90 day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission shall be deemed an event of default.

- G. **Failure to Cure.** If any Event of Default by Applicants shall occur, and after Applicants fail to cure same in accordance herewith, then after written notice to Applicant, this Agreement may be terminated without any further action required of the City and the City's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity to enforce the provisions of this Agreement.

SECTION 6. TERMINATION OF AGREEMENT.

- A. The City may terminate this Agreement without the requirement of an Event of Default by Applicants, if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.
- B. Applicant may terminate this Agreement at any time in its sole and absolute discretion by providing the City a thirty (30) day written notice of such termination.
- C. Notwithstanding any provision as provided in this Agreement to the contrary, within 90 days after the expiration or earlier termination of this Agreement, the City will transfer the Real Property to Texas Tower or its successors and/or assigns by Special Warranty Deed, subject to such liens and encumbrances existing as of the date of the expiration or earlier termination of this Agreement.

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- A. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.
- B. **Agreement Termination.** Upon the termination of Agreement, Applicant or its assignees agree that this Agreement, or the values contained within, will be used to contest appraisal values or in the determination of the market value of the Development; and the economic development incentives established within this Agreement between the contracting parties shall not be considered in valuing the property for tax purposes.
- C. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.

- D. **Assignability.** Applicants understand and agree that the City expressly prohibits Applicants from selling, transferring, assigning, or conveying, in any way, any rights associated with this Agreement to anyone, except Applicants' lender and franchisor, without the City's prior written consent. Any attempts to assign without the prior written consent of the City is void and shall be considered an Event of Default and may, at the option of the City, result in termination of this Agreement.
- E. **Applicants' Sale or Transfer of the Development.** Thirty days **or more** prior to any sale or other transfer of ownership rights of Applicant in the Development, Applicant shall notify the City in writing of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the City of such sale or transfer within the applicable period shall constitute an Event of Default.
- F. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. The individual executing this Agreement on Applicant's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same.
- G. **Completion of Development.** As consideration for the agreements of the City as contained herein, Applicant agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the Development and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations.
- H. **Compliance with the Law.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Applicant will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.
- I. **Confidentiality Obligations.** The confidentiality of records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. To the extent permitted by state or federal law, the City shall maintain the confidentiality of any proprietary information and shall not copy any such information except as necessary for dissemination to the City's agents or employees and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary information is received. The Applicant represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of the Applicant as a basis for nondisclosure.
- J. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- K. **Employment of Undocumented Workers.** During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section

2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the Grant payments received by Applicant from the City as of the date of such violation not later than 120 days after the date Applicant is notified by City of a violation of this section. City may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s), subject to repayment under this Section. Applicant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Applicant contracts.

- L. **Encumbrances.** Applicant shall place no lien on the property superior to the rights of the City.
- M. **Filing.** This Agreement shall be filed in the deed records of El Paso County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of Applicants.
- N. **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- O. **Governmental Functions.** The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- P. **No Joint Venture.** The parties acknowledge and agree that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture between the parties. The City, its past, present and future officer, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the Development or the design, construction, or operation of the Development, or any portion thereof.
- Q. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid certified or registered mail, return receipt requested, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address. Applicant shall provide all required Grant Submittal Packages and other required documentation to City electronically at the following address:
EDcompliance@elpasotexas.gov

City: City of El Paso
Attn: City Manager
PO Box 1890
El Paso, TX 79950-1890

Copy To: City of El Paso
Economic and International Development
Attn: Director
PO Box 1890
El Paso, TX 79950-1890
Email: EDcompliance@elpasotexas.gov

Applicant: 1 Texas Tower, LLC and Hotel Dulcinea, LLC
Attn: James F. Scherr
109 N Oregon St., Suite 1300
El Paso, TX 79901
Email: jimscherr@yahoo.com

- R. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Hotel, unless specifically enumerated herein.
- S. **Revenue Sharing Agreement.** The City designates this Agreement as a revenue sharing agreement, thereby entitling the City to request Sales and Use Tax information from the State Comptroller, pursuant to Section 321.3022 of the Texas Tax Code, as amended.
- T. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- U. **Recitals.** The recitals as provided at the beginning of this Agreement are hereby incorporated into this Agreement as if fully set forth herein.

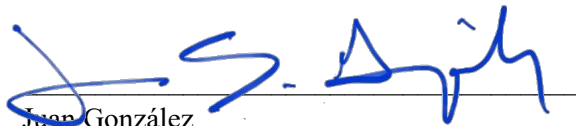
[Signatures Begin on the Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 20____.

CITY OF EL PASO, TEXAS

Tomás González
City Manager

APPROVED AS TO FORM:



Juan González
Assistant City Attorney

APPROVED AS TO CONTENT:



Elizabeth Triggs, Director
Economic and International Development

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

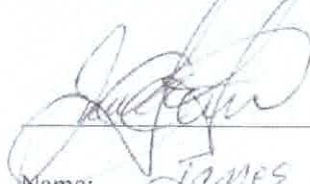
This instrument was acknowledged before me on the ____ day of _____, 2022, by **Tomás González**, as **City Manager** of the **City of El Paso, Texas (CITY)**.

Notary Public, State of Texas

My Commission Expires:

[Signatures Continue on the Following Page]

APPLICANT: I TEXAS TOWER, LLC


Name: James F. Scherer

Title: Authorized Representative

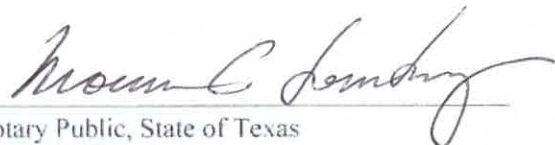
ACKNOWLEDGMENT

STATE OF TEXAS §

§

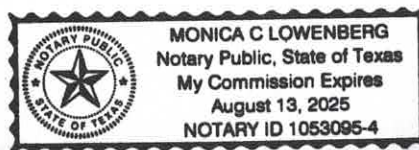
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 19th day of MAY, 2022 by JAMES F. SCHERER, as Authorized Representative of I TEXAS TOWER, LLC (APPLICANT).


Notary Public, State of Texas


My Commission Expires:

8/13/2025



[Signatures Continue on the Following Page]

APPLICANT: HOTEL DULCINEA, LLC


Name: James F. Scherer

Title: Authorized representative

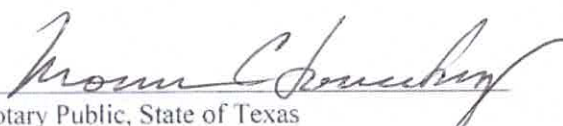
ACKNOWLEDGMENT

STATE OF TEXAS §

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COUNTY OF EL PASO §

This instrument was acknowledged before me on the 19 day of May, 2022 by JAMES F. SCHERER, as Authorized representative of HOTEL DULCINEA, LLC (APPLICANT).


Notary Public, State of Texas

My Commission Expires:

8/13/2025

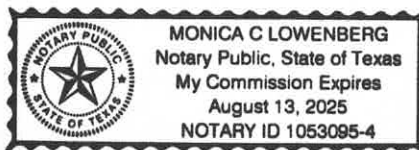


EXHIBIT A

Project Renderings & Description of Amenities



FACADE ALONG N. OREGON ST.

SCALE: 3/32" = 1'-0"

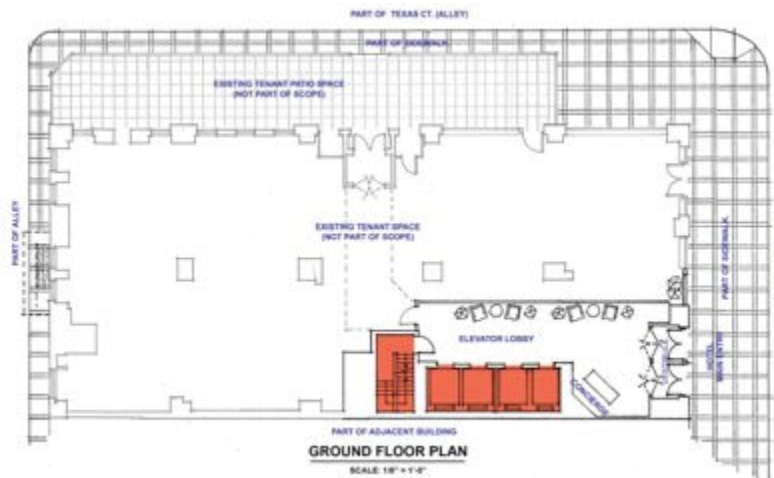
HAMPTON INN & SUITES - A BUILDING CONVERSION

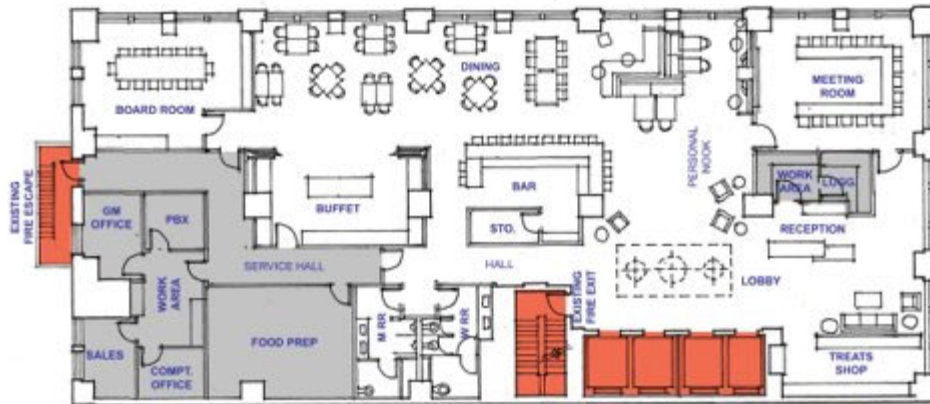
N. OREGON ST., EL PASO, TX

ARCHITECTURE • PLANNING • INTERIORS
3221A WEST ALABAMA • HOUSTON, TEXAS 77098
Office 713-522-1054 • Fax 713-522-4496 • info@mesHouston.com



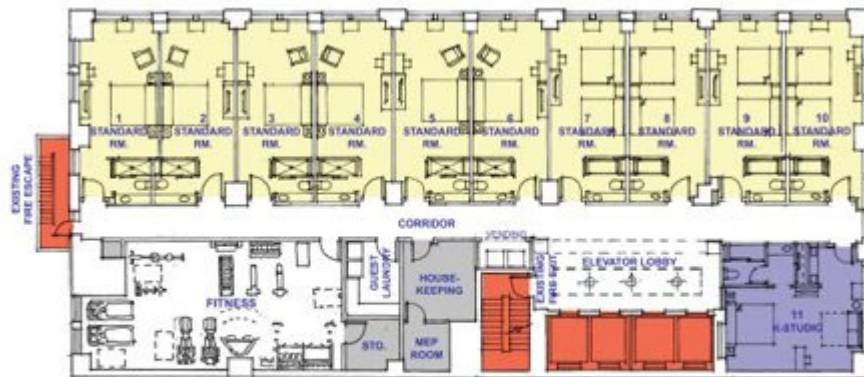
2020 03 02





SECOND FLOOR PLAN

SCALE: 1/8" = 1'-0"



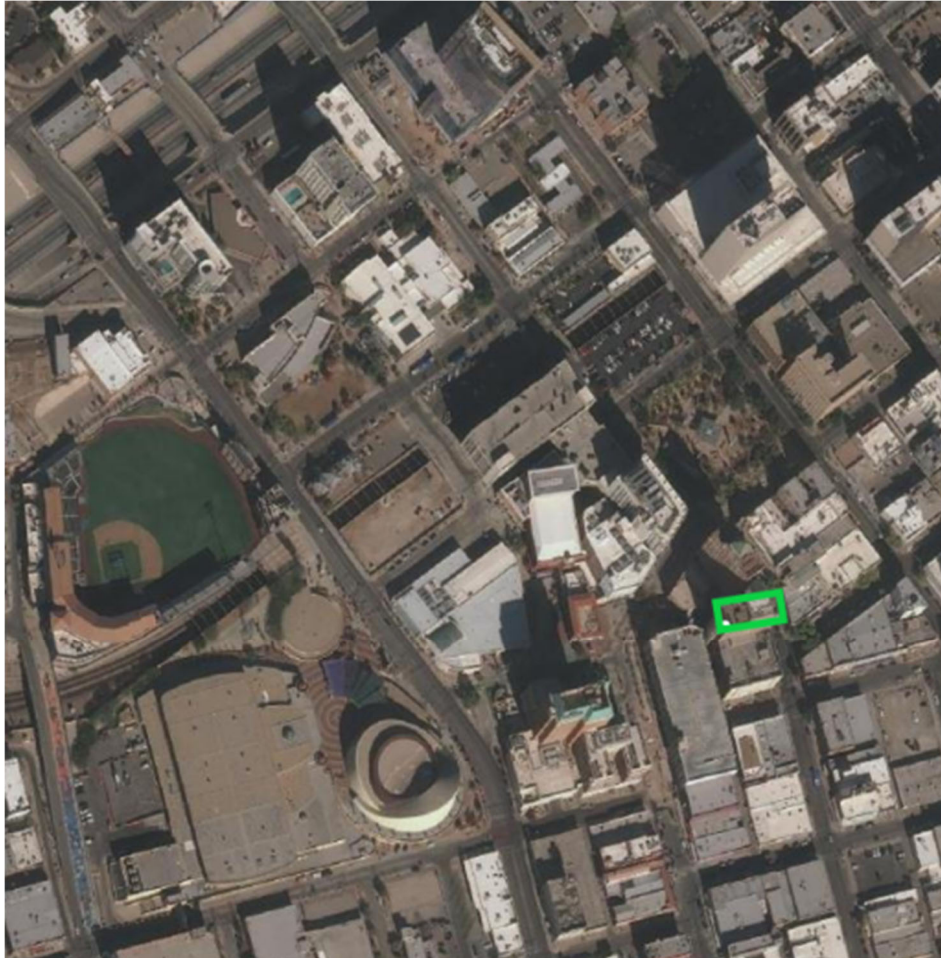
THIRD FLOOR PLAN

SCALE: 1/8" = 1'-0"

EXHIBIT B
Location of Real Property to be Developed

Location:

109 N. Oregon Street, El Paso, Texas 79901, El Paso County



Legal Description:

6 Mills 54 feet on Oregon X 120 Feet on Sheldon NEC, City of El Paso, El Paso County, Texas.

Parcel of land contains approximately 0.15 acres (6,480 Sq. Ft.) of land.

EXHIBIT C-1
State Grant Submittal Package

_____(The Applicant) believes that it has substantially met its obligations under the Chapter 380 Agreement executed on _____ (date) and signed by _____ of _____ (Company Name).

Pursuant to the Agreement the applicant submits this Hotel Occupancy Tax / Sales and Use Tax Rebate Submittal Package Form in compliance with the Agreement and in anticipation of receiving the State Hotel Occupancy Tax / State Sales and Use Tax Rebate payments referenced in the Agreement in consideration for its obligations met therein.

The following information is submitted as documentation required for the reimbursement of _____ expenses detailed and attached hereon representing eligible expenses incurred from _____ to _____ of 20____.

1. Hotel Occupancy Tax payment receipts showing proof of payment for _____ :
2. Sales and Use Tax payment receipts showing proof of payment for _____ :

It is understood by _____ (Company Name) that the City of El Paso has up to **90 days** to process this request and reserves the right to deny the Grant request if the Applicant has not complied with the terms of the Agreement.

APPLICANT: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20____
by _____, as _____
of _____ (APPLICANT / COMPANY).

Notary Public, State of Texas

My Commission Expires:

EXHIBIT C-2
City Grant Submittal Package

_____(The Applicant) believes that it has substantially met its obligations under the Chapter 380 Agreement executed on _____ (date). Pursuant to the Agreement, the Applicant submits this Grant Submittal Package Form in compliance with said Agreement and in anticipation of receiving the Grant in consideration for his obligations met under the Agreement.

As required by the Agreement, the following information is submitted.

1. **[INITIAL GRANT SUBMITTAL ONLY]** Copies of all applicable approvals and permits.
2. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation to evidence minimum expenditures amounting to **\$18,000,000** including but not limited to
 - a. Stamped **PAID** invoices
 - b. Copies of checks proving payment – corresponding to paid invoices
 - c. Receipts for purchase of construction materials (must show amount of taxes paid)
 - d. Bank statements (in the event a transaction was paid with a credit or debit card)
 - e. Contractor pay applications, notarized with lien releases
3. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation evidencing the materials and labor of Taxable Items used in the construction of the Development eligible for rebate to Applicant under the Construction Materials Sales Tax Rebate.
4. **[INITIAL GRANT SUBMITTAL ONLY]** Copy of Certificate of Occupancy in accordance with the requirements provided in Section 3(A)(7).
5. Documentation evidencing payment of Local Hotel Occupancy Tax for _____ (Quarter & Year, or Year only if paid annually).
6. Property tax payment receipts showing proof of payment for tax year _____.
7. Retailers Report – Listing of retailers located at the development
8. Waiver of Sales Tax Confidentiality Forms (**EXHIBIT D**) from Retailers on the Retailers Report who have provided such waivers (with Duty to Update)

It is understood by the Applicant that the City of El Paso has up to **90 days** to process this request and reserves the right to deny the Grant claim if the Applicant has failed to comply with the terms of the Agreement.

By the signature of the Applicant below, the Applicant hereby certifies that: (1) the copies of the receipts attached to this Grant Submittal Package Form represent Qualified Expenditures incurred in construction to the Development; (2) the Applicant has paid or caused to be paid the City's local sales and use taxes associated with the Qualified Expenditures; and (3) that the copies of the receipts and copies of the permits attached herein are true and correct.

APPLICANT: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20__
by _____, as _____
of _____ (APPLICANT / COMPANY).

Notary Public, State of Texas

My Commission Expires:

EXHIBIT D
Waiver of Sales Tax Confidentiality

Date _____

I authorize the State of Texas Comptroller of Public Accounts to release (sales tax) tax information pertaining to the taxpayer indicated below to _____, a _____, its successors, assigns or nominees, and the City of El Paso, Texas. I understand that this waiver applies only to place of business located at _____ in the City of El Paso, El Paso County, Texas.

Please print or type the following information as shown on your Texas [Sales and Use Tax Permit]: Name of Taxpayer Listed on Texas Sales Tax Permit:

Name under Which Taxpayer is Doing Business (d/b/a or Store Name):

Taxpayer Mailing Address:

Physical Location of Business Permitted for [Sales Tax] in El Paso, Texas:

Texas Taxpayer ID Number
Tax Outlet Number / TABC Number

Authorized Signature

Printed Name:

Title:

Phone:

The authorized signature must be an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return. If you have any questions concerning this Waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at (800) 531-5441.